

# **The Alaska Mental Health Trust Authority Trust Land Office**

## **BEST INTEREST DECISION L Street Parcels/Negotiated Ground Lease**

MHT 9200632  
MH Parcel(s) S82631 & S1005

In accordance with AS 38.05.801 et seq. and the implementing regulations governing Alaska Mental Health Trust (“Trust”) land management (11 AAC 99), Trust land shall be managed consistently with the responsibilities accepted by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)). This means that management shall be conducted solely in the best interest of the Trust and its beneficiaries.

In determining the best interest of the Trust and its beneficiaries, and in determining consistency between state law and the Alaska Mental Health Enabling Act, the Executive Director of the Alaska Mental Health Trust Land Office (“TLO”) shall, at a minimum, consider the following interactive Trust management principles in accordance with 11 AAC 99.020:

- Maximization of long-term revenue from Trust land;
- Protection of the corpus;
- Protection and enhancement of the long-term productivity of Trust land;
- Encouragement of a diversity of revenue-producing uses of Trust land; and
- Management of Trust land prudently, efficiently, and with accountability to the Trust and its beneficiaries.

**I. Proposed Use of Trust Land.** A long term ground lease directly with a corporate retail tenant for development of a retail outlet by the same end user.

**II. Applicant/File #.** MHT 9200632, L Street/Negotiated Ground Lease.

**III. Subject Property.**

**A. Legal Description.** Lots 1A, 2A, 3A, 5A, and 6A, Block 85, Original Townsite, according to the L Street Slide Re-plat #67-30 filed April 24, 1967 in the Anchorage Recording Office, Third Judicial District, Anchorage, Alaska, containing 1.01 acres more or less.

**B. Parcel Number(s).** MH Parcels S82631 & S1005.

**C. Site Characteristics/Primary Resource Values.** The parcels are located on the perimeter of the current downtown business and tourist district. The property consists of five individual legal parcels. Zoning is B-2C, Central Business District. The primary

value of these parcels to the Trust is through development of these parcels into income producing commercial space or enter into ground lease transactions offering annual income revenue over the term of the lease with the eventual reversion of improvements to the Trust upon expiration of the lease.

- D. Historical and Existing Uses of the Property.** The parcels had originally been developed as single-family and multi-family residential structures that have been removed and the entire assemblage has been graded level. Lots 3A and 5A are subject to a revocable land use license with a subsidiary of Diamond Parking, which can be terminated in the event the transaction proposed herein is consummated.
- E. Adjacent Land Use Trends.** The area surrounding the parcel includes single and multi-family residential, retail shops, hotels, office buildings, restaurants, healthcare facilities and surface parking lots.
- F. Previous State Plans/Classifications.** None.
- G. Existing Plans Affecting the Subject Parcel.** The Municipality of Anchorage Zoning Code has been reviewed for preliminary compatibility for the proposed use and the proposed project appears to be an allowed use in the B-2C, CBD zone. Design aspects and operational decisions may require further scrutiny by the Municipality of Anchorage and trigger public process reviews and approvals by other entities having jurisdiction over proposed uses.
- H. Apparent Highest and Best Use.** The apparent highest and best use of the property appears to be commercial development, although with each possible commercial use comes a separate set of risks and market feasibility concerns that must be evaluated on its own merits.

- IV. Proposal Background.** The proposed transaction is a ground lease with a national-credit lessee to develop the site. The lessee will construct a facility at its expense on the property and has conducted a series of initial feasibility studies and reports enabling the corporation to proceed with negotiation of a transaction document.
- V. Terms and Conditions.** TLO anticipates entering into an initial license for the operator to enter the property, conduct feasibility studies, garner project approvals as necessary, and design/permit construction of the project. A ground lease will be executed upon the operator's satisfaction of its investigation of the property.
- VI. Resource Management Considerations.** The proposal is consistent with TLO's adopted Resource Management Strategy (RMS), adopted January, 2015 in consultation with the Trust and provides for enhanced revenue from the parcel while retaining long-term ownership, increased value and development options upon expiration of the lease term.
- VII. Alternatives.** One alternative to this proposal is waiting for the market to mature over the course of time to support alternative, multi-story uses of the site. Over time, demand should increase and risk be reduced for alternative uses of the property. While much can happen to influence commercial property markets over short periods of time, long-term trends generally dictate the development of a site and it is TLO staff's opinion that alternative uses for the property could take years to come to fruition. Selling the property outright would result in the Trust having to

acquire a replacement property that provided similar or greater potential returns in the long-term. It is TLO staff's opinion that replacement property with similar long-term potential would be difficult to acquire. As stated above, the proposed transaction offers immediate income revenue over the course of the lease term and preserves ownership and flexibility for future development.

#### **VIII. Risk Management Considerations.**

- A. Performance Risks.** The underlying credit-worthiness of the proposed lessee is an important aspect of the proposed transaction and mitigates performance risks. The nature of the proposed development also preserves value and mitigates risk given that in the event of a default by the lessee, it would be relatively easy to remove the improvements and redevelop the site into a viable alternative use at that time.
- B. Environmental Risks.** There are minimal environmental risks associated with the proposed use. Federal, state and local environmental protection laws should provide adequate protections and oversight for environmental risks and impacts. As is typical with ground leases for commercial development, and in addition to environmental protection laws, additional requirements addressing environmental risks will be included within the ground lease document.
- C. Public Concerns.** Community opposition to the use is an anticipated concern, even though the property is zoned for commercial uses and this use would most likely pass approval of any required municipal review. It is likely that given the site's proximity to nearby residential uses, any proposed commercial use will meet some level of community opposition. That opposition is usually dealt with through community outreach prior to proposing the project publicly, then using feedback from the community to implement design and operational considerations that can alleviate some of the concerns raised. It is very hard to propose any type of commercial use in established neighborhoods that doesn't meet some level of neighborhood opposition.

#### **IX. Due Diligence.**

- A. Site Inspection.** TLO staff obtained consultant reports on portions of the site when parcel S1005 was acquired and when the residential structures were demolished. The proposed lessee has conducted initial feasibility due diligence and will continue to perform due diligence and planning activities upon authorization by TLO.
- B. Valuation.** An appraisal was conducted, dated November 7, 2013, and the estimated market value was established at that time. Base rent for the proposed transaction will be based on an acceptable annual return rate as a percentage of the estimated market value, with the potential for a formula providing percentage rent based on sales revenues generated at the site.
- C. Terms and Conditions Review.** In addition to TLO staff review, ongoing legal review is being conducted by legal counsel for TLO.

#### **X. Authorities.**

- A. Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99.
- B. Inconsistency Determination.** As the proposed negotiated lease is specifically authorized under 11 AAC 99, any relevant provision of law applicable to other state lands is inapplicable to this action if it is inconsistent with Trust responsibilities accepted

by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)) as clarified by AS 38.05.801 and Alaska Mental Health Trust land regulations (11 AAC 99). 11 AAC 99 includes determinations that certain State statutes applicable to other State land do not apply to Trust land unless determined by the Executive Director, on a case-by-case basis, to be consistent with 11 AAC 99.020. The State Statutes deemed inconsistent with Trust management principles and inapplicable to Trust land by these regulations have not been applied to this decision or this action, including, but not limited to, AS 38.04 (Policy for Use and Classification of State Land Surface), AS 38.05.035 (Powers and duties of the director), AS 38.05.300 (Classification of land), AS 38.05.945 (Notice), AS 38.05.946 (Hearings), and 11 AAC 02 (Appeals).

- XI. Trust Authority Consultation.** The Alaska Mental Health Trust Resource Management Committee was consulted on January 27, 2015. The Committee recommended that the proposed transaction be forwarded to the Alaska Mental Health Trust board of trustees. The board of trustees was consulted on January 28, 2015, and concurred with the negotiated ground lease subject to the outcome of the notice process.
- XII. Best Interest Decision.** Given the information above and the information contained in the complete record, the Executive Director finds that the proposed transaction is in the best interest of the Trust, subject to the terms and conditions addressed in this decision. The decision is based upon the consideration of the five Trust management principles set out in 11 AAC 99.020 and is in full compliance with 11 AAC 99. This decision does not preclude the TLO from determining that an alternative proposal will serve the best interest of the Trust. A future determination of that nature will require a best interest decision specific to the proposal.
- XIII. Opportunity for Comment.** Notice of this Best Interest Decision will take place as provided under 11 AAC 99.050. Persons who believe that the decision should be altered because it is not in the best interest of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020 or any other provision of 11 AAC 99, must provide written comments to the TLO during the notice period. Following the comment deadline, the Executive Director will consider timely written comments that question the decision on the basis of the best interest of the Trust and its beneficiaries or inconsistency with 11 AAC 99. The Executive Director will then, in his or her discretion, modify the decision in whole or in part in response to such comments or other pertinent information, or affirm the best interest decision without changes. The best interest decision as modified or affirmed will become the final agency action, subject to reconsideration procedures under 11 AAC 99.060. Additional notice will be provided for a substantially modified decision. If no comments are received by the end of the notice period, this best interest decision will be affirmed and the proposed action taken. (See notice for specific dates.)
- XIV. Reconsideration.** To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

Persons who submit timely written comments will be provided with a copy of the final written

decision, and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). The Executive Director shall order or deny reconsideration within 20 calendar days after receiving the request for reconsideration. If the Executive Director takes no action during the 20-day period following the request for reconsideration, the request is considered denied. Denial of a request for reconsideration is the final administrative decision for purposes of appeal to the superior court under AS 44.62.560.

- XV. Available Documents.** Background documents and information cited herein is on file and available for review at the TLO, located at 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503. Phone (907) 269-8658. Email: [mhtlo@alaska.gov](mailto:mhtlo@alaska.gov).

The disposal action proposed by this decision will occur no less than 30 days after the first publication date of this decision, and after the conclusion of the TLO administrative process. For specific dates or further information about the disposal, interested parties should contact the TLO at the above address, or visit the website at: [www.mhtrustland.org](http://www.mhtrustland.org).

**XVI. APPROVED:**

  
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Marcie Menefee  
Executive Director  
Alaska Mental Health Trust Land Office

2.24.15  
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Date